

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

CIVIL ACTION NO.: 1:17-cv-00854

REBECCA KOVALICH and
SUZANNE NAGELSKI,

Plaintiffs,

vs.

PREFERRED PAIN MANAGEMENT
& SPINE CARE, P.A., DR. DAVID
SPIVEY, individually, and SHERRY
SPIVEY, individually,

Defendants.

**NOTICE OF REMOVAL TO
FEDERAL COURT**

TO: UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

Defendants PREFERRED PAIN MANAGEMENT & SPINE CARE P.A. (PPMSC), DR. DAVID SPIVEY (“Dr. Spivey”) and SHERRY SPIVEY (collectively referred to as “Defendants”), by and through their undersigned counsel, hereby remove the above-entitled action from the General Court of Justice, Superior Court Division of Forsyth County, North Carolina, to the United States District Court for the Middle District of North Carolina, pursuant to 28 U.S.C. § 1331 and 1441. In support of this Notice of Removal, Defendants state as follows:

1. This action is being removed to the Federal Court based on federal question jurisdiction in that the action arises under the laws of the United States, namely the Title VII of the Civil Rights Act of 1964, as amended in 1991, 42 U.S.C. § 2000(e), *et. seq.* “Title VII,”

the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et. seq.* “ADEA”, and the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1140 (ERISA).

2. On or about August 1, 2017, Plaintiffs filed a civil action against Defendants in the Superior Court of Forsyth County, North Carolina, entitled *Rebecca Kovalich and Suzanne Nagelski vs. Preferred Pain Management & Spine Care, P.A., Dr. David Spivey and Sherry Spivey* and was assigned case number 17 CVS 4738 (hereinafter “State Action”).

3. On or about August 25, 2017, PPMSC was served with Summons and a copy of the Complaint via certified mail.

4. On or about August 25, 2017, Dr. Spivey was served with Summons and a copy of the Complaint via certified mail.

5. On or about August 25, 2017, Sherry Spivey was served with Summons and a copy of the Complaint via certified mail.

6. Pursuant to the provisions of 28 U.S.C. § 1446, a copy of Summons and Complaint are attached hereto as Exhibit “A” and incorporated herein by reference.

7. This Notice is being filed within thirty (30) days of the earliest date of service of the Complaint in this cause on one of the Defendants. Accordingly, this Notice is timely filed pursuant to 28 U.S.C. § 1446(b).

8. In the Complaint, Plaintiffs purport to assert claims against Defendants based on one or more federal statutes, including alleged claims arising under Title VII of the Civil Rights Act of 1964, as amended in 1991, 42 U.S.C. § 2000(e), *et. seq.*, Age Discrimination in Employment Act of 1979, 29 U.S.C. § 621 *et. seq.*, the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1140, and for the reason that the Plaintiffs allege that the Defendants

violated their rights under said statutes. Further, Defendants contend that the District Court will be acting within its discretion by exercising supplemental jurisdiction over any potential state law claims, pursuant to 28 U.S.C. § 1367(a).

9. Based on federal question jurisdiction, Defendants contend that the aforesaid State Court lawsuit may be removed to Federal Court by the Defendants pursuant to 28 U.S.C. § 1441(a).

10. No further proceedings have occurred in regards to the Complaint. Defendants have not served any Answer or other responsive pleading to the Summons and Complaint, nor made any appearance, argument or request for relief before the General Court of Justice, Superior Court Division for Forsyth County, North Carolina.

11. This removal is timely in that it is filed with the United States District Court for the Middle District of North Carolina, within thirty (30) days of the service of the Summons and Complaint in the State Action, in accordance with 28 U.S.C. § 1446(b). Defendants are filing contemporaneously herewith a Notice of Removal with the Clerk of the General Court of Justice, Superior Court Division for Forsyth County, North Carolina, informing the State and the Plaintiff that the State Action is being removed. A copy of the State Court Notice of Removal is attached hereto as Exhibit B.

12. Defendants submit this Notice without waiving any defenses to the claims asserted by Plaintiff or conceding that Plaintiff has alleged claims upon which relief may be granted.

WHEREFORE, Defendants pray that this action be removed from the General Court of Justice, Superior Court Division of Forsyth County, North Carolina, to the United States District Court for the Middle District of North Carolina.

Respectfully submitted this the 25th day of September, 2017.

JACKSON LEWIS P.C.

BY: /s/ Ann H. Smith
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Defendants.

**CERTIFICATE OF
SERVICE**

The undersigned certifies that on September 25, 2017, a copy of the attached *Notice of Removal to Federal Court* was served on all parties to this cause by:

- ☐ Hand delivering a copy hereof to the said party addressed as follows:
- ☒ Depositing a copy hereof, postage prepaid, in the United States Mail, addressed to said party as follows:
- ☐ Depositing a copy hereof with a nationally recognized overnight courier service, for overnight delivery, addressed to each said party as follows:
- ☐ Telecopying a copy hereof to each said party as follows:

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